IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

OSA No. 9 of 2006

Date of Decision: 25.7.2007

Gagan Deep Singh … Appellant

Versus

Manjit Singh & ors. … Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Judge.

The Hon'ble Mr. V.K.Ahuja, Judge.

Whether approved for reporting?

For the Appellant : Mr. Ajay Kumar, Advocate.

For the Respondents : Mr. Sandeep Kaushik Advocate, for respondents 1 2.
Mr. Amit Sharma, Advocate, for for respondent No.3.

Deepak Gupta, J (Oral).

This appeal under Order 41 rule 1 (r) of the Code of Civil Procedure, is directed against the order dated 3.8.2006 passed by the learned Single Judge of this Court in OMP No. 57 of 2006 in Civil Suit No.12 of 2006.

The facts, briefly stated are that the appellant (hereinafter referred to as the plaintiff) filed a suit for specific performance of an agreement dated 19.12.2002. As per the agreement, the plaintiff along with two other associates, namely, Michael

D'souza and Devinder Singh had agreed to purchase 10 bighas 2 biswas of land belonging to respondents 1 & 2 (hereinafter referred to as the defendants) for a total consideration of Rs. 60 lacs. The sale was to be executed on or before 30.9.2003. According to the plaintiff his two associates assigned their rights in the agreement in his favour on 10.5.2003. The plaintiff repeatedly approached the defendants 1 & 2 for execution of the sale deed but the sale deed was not executed on one pretext or the other. On 28.1.2006, defendants 1 and 2 sold 7 bighas of land out of the aforesaid 10 bighas 2 biswas for a consideration of Rs.14 lacs. According to the plaintiff, this is a sham transaction and the sale deed has been executed by defendants 1 and 2 in favour of defendant No.3 just to defeat his rights. Accordingly he filed the suit for specific performance of the agreement and for setting aside the sale deed dated 28.1.2006. The stand of defendants 1 and 2 is that in fact the two associates of the plaintiff, namely, Michael D'souza and Devinder Singh had on 12.12.2003 executed a revocation deed revoking the agreement dated 19.12.2000 and the defendants claimed that the they have returned the amount of Rs. 2 lacs which was received as advance money for the agreement. The stand of defendant No.3 is that he has purchased 7 bighas of land for full and valid considerations of Rs.14 lacs and he is a bonafide purchaser of the same.

The plaintiff along with the suit filed an application under Order 39 rule 1 & 2 CPC for grant of temporary injunction which

was also contested by the defendants and the impugned order has been passed on this application.

We have heard Mr. Ajay Kumar learned counsel for the plaintiff and Mr. Sandeep Kaushik learned counsel for defendants 1 and 2 and Mr. Amit Sharma learned counsel for defendant No.3.

The main contention of Mr. Ajay Kumar is that when in 2002, agreed price was Rs.6 lacs per bigha, the sale in favour of defendants No.3 by defendants 1 and 2 at the rate of Rs. 2 lacs per bigha is obviously a sham transaction to defeat the rights of the defendants. The defendant No.3 has contended that this land is of inferior quality as compared to the other land.

The learned Single Judge after considering the entire material on record held that the plaintiff's interest cannot be in more than 1/3rd of the land. He has come to the prima facie conclusion that the plaintiff has failed to show that his associates had assigned their rights in his favour. He has, therefore, directed that the unsold 3 bighas 2 biswas of land shall not be sold nor shall its nature be changed by defendants 1 and 2 without seeking prior permission of the Court. The application, in so far as it relates to 7 bighas of land sold by defendants 1 and 2 to defendant No.3 is concerned, has been rejected.

We at this stage would not like to go into the merits of the case. It would not be appropriate for this Court to express any final opinion on the grounds raised by the party. The only questions to be seen are, prima facie case, balance of convenience and irreparable harm and injury. After going

through the entire facts of the case and the rival contentions of the parties, we are of the considered view that the order of the learned Single Judge in so far as it relates to 3 bighas 2 biswas of land is concerned, is just and proper. However, with regard to the remaining 7 biswas, we feel that at this stage, it cannot be said with certainty that Michael D'souza and Devinder Singh had not assigned their rights in favour of the plaintiff.

Keeping in view the principles of lis pendens and the fact that in the eventuality of the success of the plaintiff, he should not be denied the fruits of the decree, we feel that defendant No.3 should be restrained from alienating, charging or in any manner transferring the 7 bighas of land sold to him by defendants 1 and 2 pending disposal of the suit without prior permission of the Court. The defendant No.3 may utilize the land and raise construction thereupon but anything done by the defendant No.3 shall be at his own risk and costs and shall be subject to the final result of the suit. The defendant No.3 shall not be permitted to argue that by making investment, equity has changed in his favour. The order of the learned Single Judge is modified to the aforesaid extent and the appeal is disposed of accordingly.

(Deepak Gupta), J

July 25, 2007 (V.K.Ahuja), J

s.